

28 NOV 75

MEMORANDUM FOR: Deputy Director of Personnel **OGC Has Reviewed**

SUBJECT : Use of Federal Real Property by Non-Federal Activities

REFERENCES : (a) Ltr to CIA dtd 3 Nov 75 fm Acting Associate Administrator,
Office of Federal Management Policy, GSA; same subject

(b) MFR to DD/Pers dtd 10 Dec 75 fm C/RECD responding
to above correspondence

1. This office has reviewed referent memorandum together with attachments and offers the following comments.

2. The proposed Federal Management Circular which would require Federal agencies to adopt standard requirements for assigning federally controlled real property to non-Federal activities defines at paragraph 237.6a such activities to be:

Any individual, group, organization, or association that is organized, operated, or controlled by private individual(s) or an individual(s) acting outside his official capacity as an officer, employee, or agent of the Federal Government.

In explanation of this definition, Mr. Charles Clark, Chairman of the interagency committee which prepared the draft circular, has reportedly stated that the determining factor regarding a non-Federal activity is who pays the salaries of the individuals involved--the Government or a commercial or nonappropriated fund activity. This office is of the opinion that determination of whether an activity is Federal or not should be based upon function performed and/or use of space rather than source of salary of employees.

3. Real Estate and Construction Division (RECD), OL, has noted possible adverse impact upon certain activities within the Agency if the proposed policies are implemented by regulation. This review will not address each activity individually but will restrict comment to some of them for example purposes. RECD believes difficulty may arise regarding the gymnasium vis-a-vis the definition of a non-Federal activity as used in the circular. This office is of the opinion that the gymnasium is a Federal activity not merely because the person managing it is a staff employee but rather the facility is an inherent part of the operation of the Agency.

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4. RECD has also expressed concern that the Employee Activity Association (EAA) and the Government Employees Health Association (GEHA) would be required to pay user charges. EAA is a nonstock, nonprofit corporation organized under the laws of Virginia. GEHA is organized as an association under the laws of the District of Columbia. It is noted that paragraph 237.7, Policies and Procedures of the proposed circular, details the assignment of, and the charges for, use of federally controlled real property. Furthermore, paragraph 3, appendix A to the circular, which concerns activities providing services to employees, addresses in detail the policies and procedures applicable to employee welfare and recreation associations. GEHA is a welfare association whereas EAA is both a welfare and recreation association. It is important to note that the policy to charge employee associations also provides in paragraph 3a(1) of appendix A a waiver in certain circumstances. Specifically it states:

a. Charges - Charge for the use of real property assigned to employee associations shall be assessed in accordance with Section 237.7b of this part. However, such charges may be waived where an association's use of real property does not interfere with the Government's use and does not result in the Government incurring additional expenses.

5. While all space currently being utilized by the various activities is being paid for by the Agency in accordance with the Standard Level Users Charge, it is envisioned that a non-Federal activity users charge as now projected (in view of the critical space shortage throughout the Agency) could make certain employee-oriented activities prohibitively expensive to them. Moreover, space allocations to the Agency might be restricted by GSA until certain non-Federal activities were either put on paying basis or eliminated in order to gain space for conventional Agency operations.

6. It is urged that the proposed regulation be opposed for the reasons mentioned above. Further, that if such regulation is to be required, it is recommended that the actual determination of whether or not an activity is Federal or not should be made exclusively by the Agency.



Office of General Counsel

STATINTL

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STATINTL OFFICIAL ROUTING SLIP

TO	NAME AND ADDRESS	DATE	INITIALS
1	[REDACTED] - 5E69 Hqs.	3/17	[Signature]
2	DD/Pers/SP		
3			
4			
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ACTION	DIRECT REPLY	PREPARE REPLY
APPROVAL	DISPATCH	RECOMMENDATION
COMMENT	FILE	RETURN
CONCURRENCE	INFORMATION	SIGNATURE

Remarks:

Attached are copies of memos addressed to DD/Pers. Associate General Counsel, OL, found our original of memo in their files. We still do not know what happened to AGC/OL's original memo. At any rate, here is a xerox of AGC's memo and our original.

2) The lost is partially found.

FOLD HERE TO RETURN TO SENDER

FROM: NAME, ADDRESS AND PHONE NO. DATE

Real Estate & Construction Div. [REDACTED]
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